

# SENATE BILL REPORT

## SB 5909

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As Passed Senate, February 15, 2022

**Title:** An act relating to legislative oversight of gubernatorial powers concerning emergency proclamations and unanticipated receipts.

**Brief Description:** Concerning legislative oversight of gubernatorial powers concerning emergency proclamations and unanticipated receipts.

**Sponsors:** Senators Randall, Van De Wege, Carlyle, Conway, Hunt, Mullet, Rolfes and Stanford.

**Brief History:**

**Committee Activity:** State Government & Elections: 1/28/22, 2/02/22 [DP, w/oRec].

**Floor Activity:** Passed Senate: 2/15/22, 29-20.

### Brief Summary of Bill

- Authorizes the majority and minority leaders of the Senate and the speaker and minority leader of the House of Representatives to terminate a state of emergency if the Legislature is not in session and it has been more than 90 days since the Governor declared the state of emergency.
- Authorizes the majority and minority leaders of the Senate and the speaker and minority leader of the House of Representatives to terminate a gubernatorial order prohibiting activities if the Legislature is not in session.
- Makes permanent the Joint Legislative Unanticipated Revenue Oversight Committee.

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### SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

**Majority Report:** Do pass.

Signed by Senators Hunt, Chair; Kuderer, Vice Chair; Hasegawa and Hawkins.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

**Minority Report:** That it be referred without recommendation.

Signed by Senator Wilson, J., Ranking Member.

**Staff:** Melissa Van Gorkom (786-7491)

**Background:** State of Emergency. A state of emergency is proclaimed by the Governor after finding that a public disorder, disaster, energy emergency, or riot exists within the state or any part thereof which affects life, health, property, or the public peace. The Governor may proclaim a state of emergency in the area affected. The state of emergency is effective upon the Governor's signature and remains in effect until the Governor declares its termination. The Governor must terminate a state of emergency when order has been restored in the area effected.

Powers of the Governor. An emergency proclamation enables the Governor to issue orders prohibit specific activities during the state of emergency, such as public gatherings, transfer of combustible materials, and the use of public streets at any time. In a state of emergency, the Governor may also issue an order to prohibit other activities the Governor reasonably believes is necessary to help preserve and maintain life, health, property, or the public peace. The Governor may impose the restrictions for such times, upon such conditions, with such exceptions and in such areas of the state deemed necessary.

During a state of emergency the Governor also has authority to waive or suspend statutory obligations or limitations for certain executive functions if strict compliance with the provision of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency, unless:

- authority is expressly granted to another statewide elected official; or
- the waiver or exemption would conflict with federal requirements that are a prescribed condition to the allocations of federal funds to the state, or first amendment rights of freedom of speech and of the people to peaceably assemble.

A waiver or suspension of statutory obligations or limitations issued by the Governor is limited to 30 days unless the Legislature extends it by concurrent resolution, or in writing by the majority and minority leaders of the Senate and the speaker and minority leader of the House of Representatives if the Legislature is not in session.

Joint Legislative Unanticipated Revenue Oversight Committee. During the 2021-2023 fiscal biennium, the Legislature created the Joint Legislative Unanticipated Revenue Oversight Committee (committee) of 16 members to review requests for proposed allotment amendments to spend unanticipated and unbudgeted moneys from federal and nonstate sources.

*Process.* Whenever any money in the amount of \$5,000,000 or more which was not anticipated in any budget approved by the Legislature has been awarded or has actually been received when the Legislature is not in session, and the use of the money is

unrestricted or provides discretion to use the moneys for more than one agency, program, or purpose, the Governor must submit a copy of the proposed allotment amendment to the committee with an explanation of the timing, source, and availability of such funds and why the need for the expenditure could not have been anticipated in time for such expenditure to have been approved as part of a budget act for that particular fiscal year.

The committee must meet as necessary to review requests from the Governor and provide comment within 14 calendar days. If the committee holds a public hearing on a proposed allotment they must provide the Office of Financial Management (OFM) five calendar days' notice. OFM must appear before the committee to present the proposed allotment amendment and respond to questions. The committee may also require other agencies to appear before the committee.

Actions of the committee are limited to the review and comment on requests received by the Governor and must be made by a majority vote of members. Committee actions may take the form of a recommendation approving, rejecting, or proposing an alternative allotment amendment for the Governor's consideration prior to approval. The committee's actions are not binding on the Governor.

*Membership.* The committee includes the following members:

- the majority and minority leaders of the Senate;
- the speaker and the minority leader of the House of Representatives;
- six additional members of the Senate with three members from each of the two largest caucuses of the Senate appointed by their respective leaders; and
- six additional members of the House of Representatives with three members from each of the two largest caucuses of the House of Representatives appointed by their respective leaders.

The cochairs of the committee are the leaders of the two largest caucuses of the Senate in even-numbered years and the leaders of the two largest caucuses of the House of Representatives in odd-numbered years. Staff support for the committee is provided by Senate Committee Services and the House of Representatives Office of Program Research. Committee members serve without additional compensation but must be reimbursed for travel expenses. The expenses are paid jointly by the Senate and the House of Representatives, subject to approval.

**Summary of Bill:** State of Emergency. If the Legislature is not in session the majority and minority leaders of the Senate and the speaker and minority leader of the House of Representatives may terminate a state of emergency in writing—by all four members—if it has been more than 90 days since the Governor declared the state of emergency.

Powers of the Governor. If the Legislature is not in session the majority and minority leaders of the Senate and the speaker and minority leader of the House of Representatives may terminate in writing—by all four members—an order or orders issued by the Governor

to prohibit activities.

Joint Legislative Unanticipated Revenue Oversight Committee. Makes permanent the Joint Legislative Unanticipated Revenue Oversight Committee to review requests for proposed allotment amendments to spend unanticipated and unbudgeted moneys received by the state from federal and nonstate sources in the amount of \$5,000,000 or more.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** Yes.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: We have learned so many lessons in the past few years which includes the fact that there is a gap in the checks and balances of our system of government. There do exist some ways for the Legislature to act regarding prohibitive orders while the Legislature is in session by passing laws or having conversations with the Governor's office but the two places we don't have a voice are when the Governor passes a prohibitive order or receives additional money in unanticipated receipts when we are out of session. Emergencies affect all of our communities and we need to do some work to ensure that the balance of power is right as we move into any future emergencies. Main Policy Institute made a 50 state scorecard regarding emergency powers laws and Washington scored among the worst because the Governor is the sole judge of whether an emergency exists and when it should cease to exist. This is a start but additional revisions are needed: the state of emergency should not be whatever the Governor declares, it should be fact based and objective; there should be an automatic mandatory legislative session after ten days of an emergency that remains until the emergency is over; and there should be a self-help procedure for individuals to be able to seek help for excessive emergency orders.

With over 700 days of unchecked emergency orders, the Governor has crippled our livelihoods. Private business and pay were put on hold for several months which causes suffering to families. I lost my job because of a proclamation. Our children are watching and studying the constitution and seeing that the Legislature does not have the voice they are supposed to have. The Washington constitution declaration of rights says that all political power is inherent in the people and the governments derive their just powers from the consent of the governed and are established to protect and maintain individual rights. I was surprised that the Legislature put all of the power with the Governor back in 1969 but now there is a need to bring us back to a balanced government. From the beginning of the pandemic the narrative has been about fear and pseudo-science. There should be a requirement for the Governor to use science and data to back up the justification and it should be publicly available immediately for review. There should also be a supermajority

required to extend a state of emergency.

CON: This bill will allow the Legislature to end an emergency proclamation prematurely. We've seen this has happened in other states. This bill has some unintended consequences because ending a proclamation prematurely will put federal funding at risk. Recent disasters have shown that there is a lot of money on the line. If we end the emergency proclamation the federal funding stops, which is a problem because the recovery lasts for years. We also have concerns regarding the proposal for a 14 day review period for funding which could delay funding getting to our local jurisdictions. Over 10,000 businesses have closed in the state over the Governor's emergency orders. There is no emergency after 700 days. The Governor should not have unchecked authority to determine the amount of people that can be on public property or the amount of food or products that should be sold.

OTHER: The Governor needs to quickly respond during an emergency but with this power should come meaningful legislative oversight and unfortunately the statute has a weakness in that regard. When the Governor waives a law it automatically expires within 30 days unless the Legislature approves it but that does not exist to those prohibitive restrictions. There is no logical reason to treat these things differently, both should require legislative approval and should expire in the same period of time. This should address any concern to ensure that federal funds can continue to be received, whether or not the declaration is in place is not what matters to citizens, it is the prohibitions that need to have legislative oversight. This would not stop the Governor's ability to act, it would just require that after 30 days it goes to the Legislature. If the consensus of the body is that an emergency exists so be it, but that debate needs to occur more often during times of terminal, not less. A long-lasting emergency means complexity and severity and the Legislature should have a voice in that. The bill should require review to determine that an emergency exists at least every 60 days and if all four corners do not agree then the entire legislative body should be convened. It shouldn't just be up to all four members because then one member could cause it to not happen. You should consider the report card and make appropriate changes so that we are in a good place in the future. After 30 days there needs to be legislative oversight where the cost and benefits are weighed and if need be, policies put in place after deliberation in a public process. This is a start, but it is not good enough.

The emergency orders are far overreaching, effecting the lives of families and businesses. The declaration of an emergency barred people from doing things that our constitution guarantees the right to do. Any bill that prevents the ability of the people to assemble and share their opinion is not okay, the people of Washington want their rights back. I am unable to wear a mask due to a disability and lost my job because of it, medical and religious exemptions no longer exist. Forcing a non-FDA approved treatment is a violation of rights that must end. It is absurd that children must wear masks while I can go and eat and drink with my friends without one. The role of government is not to keep us safe, it is to keep us free.

**Persons Testifying:** PRO: Senator Emily Randall, Prime Sponsor; Nick Murray, Maine

Policy Institute; Shelly Burt; Jennifer Killman; Annette Rose; Jeanette Bowers Weaver; Sara Cappello, voter; Logan Veersamy; Stephanie Seagraves; Terry Larson; David Lawton; Dr. Clifford Knopik, Independent Researcher.

CON: Major General Bret Daugherty, Director, Washington Military Department and The Adjutant General; Kurt Silvers; John Alcorn, USTA Martial Arts La Conner.

OTHER: Jason Mercier, Washington Policy Center; Aaron Lang; Amanda McKinney, Yakima County Commissioner; Richard Grunewald; David Hall; Torie Wauchope; David Fritch, Citizen; Misty Flowers; Emeri Hansen; Sara Griffiths; Terry Hodges.

**Persons Signed In To Testify But Not Testifying:** PRO: Leah Lee; Toni Hoffman; Matthew O'Hara; Gayle Baker; Jordan Longacre; Kamberly Warner; Daniel Orr; Laurie Layne; Mark Harp; Amy Myers; Stark Ryan; Kari Hannon; Douglas Rosenthal; Natalie Poulson, Spokane Education teachers and parents; Kelly Jay; Jessica Rangel; Kyle Miller; Steve Turcott; Erik Alsin; Chad Snyder; Russell Blake; Jason Stearns; Susan Coffman, Informed Choice Washington; Grant Keller; Ari McDonald; Andrew Young; Allen Calderwood; Thomas&Cleda Galioto; Timothy S Hazelo; Jeffery Dews; Sheri Ferguson; Wendy Tanner; Jennifer Barnes; Andrea Sander; Brett Nunn, Citizen of Washington State; Leslie Linderoth; Lara Gabriel; Barbara Powers; Katelyn Neniskis; Anna Meadows, Myself; ZHENG CAO; Lysie Holt; Frank Dahlquist, King County Firefighters United; David Casteel, David Casteel; Tom Seim; Lindy Campbell; Hannah Ordos, Private citizen; David Heizer; Cynthia Sjoblom; Debbie Roth; Janelle Hall; Stephen Schumacher; Jeff myers; Shalon Kershaw; Erik Hansen; Bryan Grey, Free Citizen of WA; Lorinda Willis; John Frink.

CON: Eric Pratt, America; Jerrod Sessler, Jerrod Sessler for Congress; Ryan Whitten; Raquel Brooks; Jennifer Witman; Jilona Speer; Lauri Johnson; Gordon Peludat; Joe Kendo, Washington State Labor Council, AFL-CIO; Ellis Jolene; Pete Serrano, Silent Majority Foundation.

OTHER: Roger Maib; Gina Bradley; Jeffrey McFadden; Doug Knighton; Scott Storch, Private Citizen; Kristin Koskinen; Cyndi Schaeffer, King County; Rebecca Faust; Margaret Tweet.